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VIA E-MAIL

Richard Haymaker
Chief Legal Counsel
Illinois Liquor Control Commission
100 W. Randolph St., Suite 7-801
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RE: Comments to ILCC Proposed Rules Under Consideration

Dear Rick:

WSDI has reviewed the Commission's proposed draft Rules posted on the Commission's web page and offers the comments below to each:

Section 2075.200 – Current description of Agency's Organization

It appears the intent of this proposed rule is to allow the Commission's staff to review and act upon liquor license applications, as well as other administrative tasks that the staff performs on behalf of the Commission. WSDI supports the Commission's staff having the delegated authority to operate as the Commission in these non-controversial or non-adversarial administrative duties. In its current form, however, the proposed rule is unconstitutional insofar as it purports to authorize the Commission to delegate its powers and duties to its staff. It also would violate Section 5-20 of the APA insofar as it lacks standards for the delegation.

Section 100.15 - Regulation of Low Alcoholic Content Products

The inclusion of "frozen products", without defining "frozen drinks" may catch more (or less) of the products intended. This proposed rule requires further clarification to be enforceable.

Section 100.255 - Off Premises Retail Warehousing Prohibited

The Illinois Hotel & Lodging Association has introduced legislation to exempt hotels from the enforcement of the Multi-Use Facilities Commission Rule (Sec. 100.270). Thus, this proposed rule should be addressed to the retailer's state licensed premises. In addition, it is our understanding that distributors are unable to deliver to licensed premises at ORD and Millennium Park and there may be other such locations of which we are unaware. WSDI agrees that under the Illinois Liquor Control Act retailers are prohibited from storing or warehousing alcoholic liquors away from their licensed premises. However, as written, the proposed rule may, in certain situations, bar distributors from actual delivery to the licensed premises. This rule therefore requires further amendment.

Section 100.275 – Hotel/Motel Mini Bars and Room Service

The proposed mini-bar and room service rule creates an affirmative duty on a hotel to continuously monitor mini-bars. The careful monitoring of room service, which is directly in the control of the hotel, is undertaken by most full-service hotels, as best practices. Monitoring mini-bars by hotels, where the control of the liquor outlet was transferred to the hotel guest at check-in, places too great a burden and liability on the hotel. Hotel guests over the minimum legal drinking age are handed control of their rented rooms upon check-in. As their temporary home, hotel guests are responsible for their guests in their rooms. There is no legal authority in the Liquor Control Act under which this legal liability may be passed to the hotel. This rule should be stricken.

Further, WSDI is concerned by the requirement that mini-bars and room service should be licensed separately by state and local authorities. The liquor is delivered at the same location: the guest's room. The only difference is the service.

Section 100.325 - Boats/Riverboat Gaming

WSDI is uncertain as to the need to include riverboats holding gaming privileges under the category of "boat licenses" in this proposed rule. Riverboats with gaming privileges do not operate regularly as common carriers on navigable waterways. Accordingly, river boats with gaming privileges cannot be defined as "boats" under the Liquor Control Act. WSDI believes that under Illinois' home-rule authority, local units of government should have the right to license riverboats.

Section 100.326 - Auction Liquor Licenses

WSDI makes no comment to this proposed rule at this time.

Section 100.420 - Wine Maker Self Distribution

WSDI makes no comment to this proposed rule at this time.

Section 100.430 – Craft Brewer Self Distribution

In order for a brewer, other than a home brewer, to engage in brewing beer, it must hold a Federal Brewer's Notice issued by the TTB on the basis of the brewer posting a brewer's surety bond. WSDI proposes that this proposed rule include the Brewer's Bond in Subsection (a), in addition to the Brewer's Notice.

Section 100.400 – Private Labeling

Subsection (b) could result in a competing retailer purchasing the private label and engaging in sales programs deleterious to the brand and the private label retailer. In addition, by giving that private label wide distribution the manufacturer and distributor are providing an "of value" advertising service to the private label retailer. WSDI proposes that private labels may only be sold and made available to the private label retailer.

Section 100.450 Consignment Sales

Reference to the Code of Federal Regulations as authority for a consignment sales rule lacks the requisite state law-based authority. *See, e.g., Printz v. U.S.*, 521 U.S. 898 (1997). Consignment

sales in Illinois are based in Sec. 6-5 and 6-6 of the Act: the prohibited furnishing of something “of value”. WSDI suggests that this proposed rule undergo further amendment to clarify Illinois’ policy on consignment and sales on any basis other than a bona fide sale.

Section 100.460 Product Returns

Please see preceding comment.

Section 100.480 - Importation of Alcoholic Liquor

WSDI supports the Commission’s efforts to fulfill its duties in regulating the importation of alcoholic liquor into Illinois. However, such regulatory efforts must be undertaken within the authority granted the Commission by the General Assembly and the Illinois Constitution of 1970. Herein, WSDI is concerned with Subsection (b)(2) of the proposed rule in that establishing the need for Commission prior approval of the personal importation of more than one gallon would potentially burden the Commission’s already stretched resources. This would be to the detriment of the Commission’s need to regulate the alcoholic liquor market in Illinois; the burgeoning direct sales of alcoholic liquors through the internet; and the continuing bootlegging of liquors into Illinois by unscrupulous retailers from the surrounding states. WSDI proposes that this subsection be eliminated from this proposed rule.

Rick, on behalf of WSDI, I greatly appreciate the time and effort you and your staff have put into drafting these proposed rules. WSDI would like to continue to assist the Commission in creating workable JCAR rules for the purpose of establishing rules that comply with the Commission’s grant of authority under the Act and Illinois’ Constitutional framework. The need to provide the Commission with thorough and inexpensive monitoring tools to reduce the importation of illicit or untaxed alcoholic liquor, as well as an effective three-tier distribution system and an orderly market is of paramount concern to WSDI.

Sincerely,
Wine and Spirits Distributors of Illinois

By:
Karin Lijana Matura, Executive Director